

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 1321 of 1986
Date of decision: March 14, 2007

Surat Singh and others	...Petitioners
Versus	
State of Haryana and others	...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL

Present: Mr. Arun Jain, Advocate,
for the petitioners.

Mr. Ashish Kapoor, Addl. A.G., Haryana, for
respondents No. 1 to 4.

Mr. CB Goel, Advocate, for
respondents No. 5 & 6.

Mr. Ranjit Saini, Advocate, for
respondent No. 7.

K.S.GAREWAL, J.

This petition relates to the proceedings under the provisions of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as **the 1953 Act**) and Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as **the 1972 Act**).

Surat Singh of Kurana, Tehsil Panipat, petitioner and his brother Mai Dhan's children Raghbir Singh, Kartari, Banmati and Ratni are

petitioners 2 to 5.

The contesting respondents are also from Kurana and they are Luxmi Narain and Leela Rani, respondents 5 and 6 respectively. The 7th respondent is Rameshwar. Surat Singh and his brother Mai Dhan owned 83 standard acres 9-1/2 units of land in equal share. When the surplus area case was decided under the provisions of the 1953 Act, 23 standard acres and 9-1/2 units were declared surplus, but there was a mistake. 100 kanals of land in excess had been mistakenly taken out from their holdings and added to the surplus pool. This mistake was sought to be rectified and was ultimately rectified by the Financial Commissioner on February 3, 1982. The case was remanded back to the Prescribed Authority.

At this stage, the landowners filed a fresh application that after consolidation their permissible area had got reduced. The Prescribed Authority on May 30, 1983 (Annexure P/1) took both points into consideration and held that after giving 30 standard acres each to Surat Singh and Mai Dhan for their cultivation, only 5 standard acres 8-1/2 units of land could be declared surplus with each of them.

The order of the Prescribed Authority was challenged before the Commissioner, Ambala Division by Luxmi Narain and Leela Rani (respondents 5 & 6) and it was held that the Prescribed Authority acting as Collector Agrarian, possessed no jurisdiction to pass the impugned order on May 30, 1983. The Commissioner was of the view that the 1953 Act had been repealed and powers regarding review or revision were available only with the Financial Commissioner under Section 33 (iii) of the 1972 Act. The order was thus set aside on September 19, 1984 (Annexure P/2) and this decision was upheld by the Financial Commissioner on November 5, 1985

(Annexure P/3).

The learned counsel for the petitioners has contended that on February 3, 1982 the Financial Commissioner remanded back the case to the Prescribed Authority for rectifying a mistake. Therefore, the proceedings, which were taken up by the Prescribed Authority and which culminated in favour of the petitioners on May 30, 1983 (Annexure P/1), were proceedings for correcting a mistake under Section 24-A (i) (ii) of the 1953 Act. It was further contended that under Section 33 of the 1972 Act, only those provisions of the 1953 Act were repealed which were inconsistent with its provisions. However, it was specifically provided that repeal shall not affect proceedings for determination of surplus area pending immediately before the commencement of the 1972 Act. Such proceedings shall continue and be disposed of as if 1972 Act has not been passed.

The second limb of the argument was that Section 24-A of the 1953 Act made it clear that the landowner should be given another opportunity to separate the area after consolidation of the land, if the declared surplus had not been utilized. Reduction of permissible area as a result of consolidation should not make the landowners suffer. They would be entitled to approach the Collector and reserve their permissible area afresh.

The question to be considered is whether the remand of the case on February 3, 1982 to rectify the mistake would constitute pending proceedings for determination of surplus area at the time of commencement of the 1972 Act. What has happened in the present case is that after remand to the Prescribed Authority, the proceedings under the provisions of the 1953 Act were re-commenced. Therefore, even though no proceedings were

pending under the 1953 Act at the time of the enforcement of the 1972 Act, correction of mistakes could only be done under the 1953 Act. At this stage, the Prescribed Authority could not for obvious reasons declare more land as surplus on account of the permissible area being reduced from 30 standard acres under the 1953 Act to 7.2 hectares under the 1972 Act. This is because the Prescribed Authority was acting under the 1953 Act and the proceedings were for rectification, which was perfectly legal and valid. The Commissioner in his order dated September 19, 1984 upheld the determination of the surplus area finally approved by the Financial Commissioner as 373 K 6 M as surplus, thereby rectifying the mistake of 100 kanals which had occurred but did not accept that the Prescribed Authority could give the benefit for post-consolidation events.

The learned counsel has referred to **1977 P.L.J 16 The State of Punjab (Now Haryana) and others Versus Mauji** in which it was held that Section 24-A (2) of the 1953 Act were applicable while determining the surplus area. Counsel also referred to **1977 P.L.J. 81 Chanan Mal Newar and others Versus State of Haryana and others** in support of his argument that when a party's case is pending under the provisions of 1953 Act, at the time of commencement of the 1972, Act it had to continue under the provisions of the 1953 Act. Therefore, Revenue Courts do possess powers to review their judgment rendered under the provisions of the 1953 Act even after the repeal of that Act by Section 33 of the 1972 Act.

Consequently, the Prescribed Authority was justified in passing the order giving the benefit to the petitioners for the correction

of the surplus area by reducing it by 100 kanals and also for giving them the benefit of Section 24 A (2) of the 1953 Act which entitled authorities to give landowners benefit of consolidation proceedings under which their area had got reduced, if that area has not been utilized. The Prescribed Authority also found that only 5 standard acres and 8-1/2 unit of land was left for the surplus pool after 5 standard acres had been utilized by the tenants and therefore, only 8-1/2 units of land remains to be utilized.

As a result of the above discussion the orders of the Commissioner, dated September 19, 1984 (Annexure P/2) and the Financial Commissioner dated November 5, 1985 (Annexure P/3) are set aside and the order of the Prescribed Authority dated May 30, 1983 (Annexure P/1) is restored.

The writ petition is allowed to the extent indicated above.

March 14, 2007
prem

(K.S.GAREWAL)
JUDGE